

DETAILED ACTION

Notice of Amendment

1. In response to the amendment filed on 06/04/2008, amended claim(s) 1, 2, 8, 9, and 10 is/are acknowledged. The current objections and rejections is/are *withdrawn*.

The following is/are set forth:

EXAMINER'S AMENDMENT

2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Warner Delaune on 8/26/2008.

The application has been amended as follows:

Claim 1 should read as follows:

1. (Currently amended) A dynamic spacer for measuring **[the]** flexion and extension gaps during knee arthroplasty, the dynamic spacer comprising: a first planar member having a lower tissue engaging surface and an upper tensioning surface, a second planar member having an upper tissue engaging surface and a lower tensioning surface, and a tensioning means residing entirely between said upper tissue engaging surface and said lower tissue engaging surface for applying a tensile force acting upon said first and said second planar members during the measuring of the flexion and

extension gaps, said tensioning means fixedly attached to said upper tensioning surface of said first planar member and said lower tensioning surface of said second planar member[.], **wherein said dynamic spacer is configured to reside completely internally to the knee during said knee arthroplasty.**

Allowable Subject Matter

3. Claims 1, 2, 5, and 7-11 are allowed.
4. The following is an examiner's statement of reasons for allowance: the prior art does not disclose, teach, and/or fairly suggest a dynamic spacer for measuring flexion and extension gaps during knee arthroplasty, comprising *inter alia*: the fixedly attached tensioning means for applying a tensile force to upper and lower planar members during a measurement of flexion and extension gaps, wherein the spacer resides completely within the knee.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEFFREY G. HOEKSTRA whose telephone number is

(571)272-7232. The examiner can normally be reached on Monday through Friday 8am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/J.H./
Jeff Hoekstra
Examiner, Art Unit 3736

/Max Hindenburg/
Supervisory Patent Examiner, Art Unit 3736